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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/539,815	03/31/2000	Larry Phillips	MATP-587US	1591

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EXAMINER

NGUYEN, HUY THANH

ART UNIT	PAPER NUMBER
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2615

DATE MAILED: 04/28/2004

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/539,815

Applicant(s)

PHILLIPS ET AL.

Examiner

HUY T NGUYEN

Art Unit

2615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-7 is/are rejected.
- 7) ☒ Claim(s) 4 and 8-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakamura et al (5,745,645) .

Regarding claims 1 and 5 Nakamura discloses an apparatus (Figs. 25 and 26 and a method for storing video and audio data which have been compressed according to a standard specified by the Moving Pictures Experts Group (MPEG), the method comprising the steps of:

formatting the video and audio data into respective program elementary stream (PES) packets (column 27, lines 27 20-35, column 28, lines 17-25); recording the video and audio PES packets on a disk (column 29, lines 1-5); retrieving the video and audio PES packets from the disk (column 29, lines 40-60, Figs. 25 and 26);

storing the retrieved audio and video PES packets into respective video and audio buffers (2600 and 2800) Fig. 26); and

providing the audio and video PES packets from the respective audio and video buffers to an MPEG decoder (3081 and 3200) (Fig. 26, columns 31 and 32).

Applicant argues that Nakamura does not teach that PES video are recorded separately from PES audio. In response the examiner disagrees. It is submitted that Nakamura teaches the video and audio are formed as separate PES. Each video PES video comprising video data and header containing time information relating to video data used for decoding the corresponding video data of the packet and each audio EPS comprising audio data and header containing time information relating to the audio data used for decoding the corresponding audio data of the packet and each audio packet is separate from video packet. It is clear that Nakamura teaches video packet elementary is separate from the audio packet elementary

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 2,3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura in view of Tamura (5,323,67).

Regarding claims 2 and 6, Nakamura fails to teaches storing audio PES packets representing a sufficient amount of audio information provide the MPEG decoder with data during an interval in which no data is being stored into the buffer due to a soft error on the disk.

Tamura teaches a reproducing apparatus having a control means for controlling a memory means for storing encoded audio data representing a sufficient amount of audio information provide to a decoder r with data during an interval in which no data is being stored into the buffer due to a soft error on the disk (column 1, lines 15 – 34).

It would have been obvious to one of ordinary skill in the art to modify Nakamura with Tamura by using an audio memory means as taught by Tamura as the audio buffer of Nakamura in order to preventing interruption of the audio information provided to the MPEG decoder.

Regarding claim 3, Nakamura further teaches the MPEG decoder includes an internal clock signal and the method further includes the step of synchronizing the internal clock signal to the audio packets provided to the audio buffer (column 31, lines 22-28 and column 32, lines 13-20).

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamura in view of Tamura as applied to claim 6 above, and further in view of Fujita (5,930,450).

Regarding claim 7, Nakamura fails to specifically teach that the audio buffer memory has an amount of memory sufficient to hold encoded audio data representing approximately ten seconds of audio output.

Fujita teaches a reproducing apparatus having a buffer memory has a capacity of storing an amount of audio data representing approximately ten seconds of audio output (column 21, lines 15-25).

It would have been obvious to one of ordinary skill in the art to modify Nakamura with Fujita by using a audio buffer memory as taught by Fujita as an alternative to the audio buffer of Nakamura for storing the audio data thereby increasing the storage of the amount of the audio data needed to be processed .

Response to Arguments

6. Applicant's arguments filed 20 February 2004 have been fully considered but they are not persuasive.

Allowable Subject Matter

7. Claims 4 and 8-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUY T NGUYEN whose telephone number is (703) 305-4775. The examiner can normally be reached on 8:30AM -6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Christensen can be reached on (703) 308-9644. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Application/Control Number: 09/539,815
Art Unit: 2615

Page 7

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

H.N


HUY NGUYEN
PRIMARY EXAMINER